

Office of the Attorney General
State of North Dakota

Opinion No. 83-35

Date Issued: August 22, 1983

Requested by: Gail H. Hagerty
Burleigh County State's Attorney

--QUESTION PRESENTED--

Whether a foster parent may serve on a county social service board.

--ATTORNEY GENERAL'S OPINION--

It is my opinion that a foster parent may not serve on a county social service board.

--ANALYSIS--

Foster parents, when properly licensed pursuant to Chapter 50-11 of the North Dakota Century Code, may furnish care to foster children. Payment for that care is ordinarily made by or through the county social service board, in fulfillment of its administrative responsibilities under either Section 50-01-09, N.D.C.C., or Section 50-09-03, N.D.C.C. County taxes support these payments (see Section 50-01-10, N.D.C.C., and Section 50-09-20, N.D.C.C.).

In order to be licensed or to receive payment for children in foster care, foster parents receive training and agree to furnish adequate care and to conform the conduct of their foster home to standards set by the North Dakota Department of Human Services.

Upon request of that department, 'the county social service board in the county wherein the home is located shall inspect any place for which a license is applied for or issued and shall report these findings to the department.' (Section 50-11-06.2, N.D.C.C.)

The county social service board is required to 'schedule an informal meeting' with a view to creating '[a] written resolution relating to the grievance' which may be filed by a foster parent with respect to 'any decision made by . . . a county social service board which substantially affects the licensed foster parent.' (Section 50-11.2-02, N.D.C.C.)

In addition to its administrative duties in the foster care program, the county social service board serves as the primary source of children who require foster care. Many children in need of foster care are wards of the county social service board by virtue of court orders issued pursuant to Chapters 14-15 and 27-20, N.D.C.C.

With these several responsibilities to discharge, a foster parent, sitting as a member of a county social service board, would find himself or herself in violation of provisions of law intended to prevent conflicts of interest from influencing the actions of public servants. Sections 12.1-13-02(2) and 12.1-13-03, N.D.C.C., have application. They provide:

12.1-13-02. SPECULATING OR WAGERING ON OFFICIAL ACTION OR INFORMATION.--

2. A person is guilty of a class A misdemeanor if as a public servant he takes official action which is likely to benefit him as a result of an acquisition of a pecuniary interest in any property, transaction, or enterprise, or of a speculation or wager, which he made, or caused or aided another to make, in contemplation of such official action.

12.1-13-03. PUBLIC SERVANT'S INTEREST IN PUBLIC CONTRACTS.--1. Every public servant authorized . . . to make any contract in his official capacity, alone or in conjunction with other public servants, who voluntarily becomes interested individually in the . . . contract, directly or indirectly, is guilty of a class A misdemeanor.

2. Subsection 1 shall not apply to:
 - a. Contracts of purchase or employment between a political subdivision and an officer of that subdivision, if the contracts are first unanimously approved by the other members at a meeting of the governing body of the political subdivision, and a unanimous finding is entered in the official minutes of that body that the contract is necessary because the services or property contracted for are not otherwise obtainable at equal cost.

It must be noted that the exception found at Section 12.1-13-03(2)(a), N.D.C.C., allowing necessary contracts, where the county commissioners determine that the 'services or property contracted for are not otherwise obtainable at equal costs,' has no application. The foster care payment rate is uniformly set by the Department of Human Services.

The laws concerning the appointment of the members of the county social service board do not expressly preclude the appointment of a foster parent. Neither, however, do they expressly preclude the appointment of any other person whose service may create a conflict of interest. Rather, the board of county commissioners is required to appoint members of the social service board 'upon the basis of their fitness to serve by reason of character, experience, and training' (Section 50-01-07, N.D.C.C.). The Legislature did not intend that a

person, whose very participation in some county social service board duties would be a criminal act, could fall within this fitness requirement.

--EFFECT--

This opinion is issued pursuant to Section 54-12-01, N.D.C.C. It governs the actions of public officials until such time as the question presented is decided by the courts.

Robert O. Wefald
Attorney General

Prepared by: Blaine L. Nordwall
Assistant Attorney General